

WORKERS' COMPENSATION ORDINANCE

Hoopa Valley Tribe
Hoopa Valley Indian Reservation

TITLE 46

ORDINANCE NO: 2-97

DATE APPROVED: November 6, 1997 as amended July 20, 2000

SUBJECT: Workers' Compensation Ordinance of the Hoopa Valley Tribe

WHEREAS: the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1300i *et seq.*);

WHEREAS: The Hoopa Valley Tribal Council on March 28, 1994 approved the Protected Self-Insurance proposal submitted by Arthur J. Gallagher and Company for the Hoopa Valley Tribal Lands which consisted of Property, Casualty and Workers' Compensation insurance.

WHEREAS: The Hoopa Valley Tribal Council approved the new insurance plan effective April 1, 1994.

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS: The Hoopa Valley Tribal Council deems a Workers' Compensation Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe and Employees of the Hoopa Valley Tribe.

NOW, THEREFORE BE IT RESOLVED, that the following Ordinance governing workers' compensation administration by the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Ordinance expressly revokes all versions of Resolution 95-116 and such Resolutions shall no longer be of any force or effect.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Ordinance is to have retroactive effect to October 12, 1995 and shall apply to all worker's compensation cases pending as of the date of the adoption of this Ordinance.

§ 1 PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform procedure for administration of workers' compensation benefits to Employees of the Hoopa Valley Tribe or a tribal entity. This Ordinance shall also establish a systematic and uniform procedure to administer and define the Hoopa Valley Tribal Council's self-funded Workers' Compensation program, under the direction of Tribal Risk Management, for meeting and resolving its industrial injury liabilities, risk assessment, prevention of abuse and fraud, cost control, medical and vocational rehabilitation of Tribal Employees and provision of a program that is equitable to both Tribal Employees and the Tribe.

§ 2 SCOPE

This policy applies to all Employees of the Hoopa Valley Tribe, its departments and its subordinate entities and is the exclusive method for compensation liability against the Hoopa Valley Tribe for Employee injury sustained in the course of employment including emotional distress arising from the employment relationship including, but not limited to, discharge and work-related disability discrimination.

§ 3 DEFINITIONS

A. **"Council"** means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

B. **"Employee"** means a person, other than an independent contractor, employed by or in the service of the Hoopa Valley Tribe or one of its subordinate entities under any contract of hire, express or implied, oral or written, where the Hoopa Valley Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, "Employee" shall also include Council members, commission members and committee members.

C. **"Employer"** means the Hoopa Valley Tribe, its departments or one of its subordinate entities.

D. **"Tribal Entity"** means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.

E. **"Third Party Administrator"** shall mean the agency that is responsible for managing the Workers' Compensation Program of the Hoopa Valley Tribe. Responsibilities include, but are not limited to, determining the compensability of claims, making payments to injured workers, medical providers and others; managing a trust

account for the purpose of dispensing the Hoopa Valley Tribe's workers' compensation liabilities; and, making reports to the Hoopa Valley Tribe regarding their program and individual claims.

F. **"Work injury"** shall include any injury or disease arising out and in the course of the employment, including injuries arising out of the employment, including injuries to artificial members, dentures, hearing aids, eyeglasses, and medical braces all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability.

Work injuries under this section shall be either:

1. "Specific" occurring as a result of one incident or exposure which causes disability or need for medical treatment; or

2. "Cumulative" occurring as a result of repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative trauma injury is the date upon which the Employee first suffered disability therefrom and knew or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

G. **"Occupational Disease"** shall mean any disease resulting from exposure during employment to conditions or substances detrimental to the claimant's health which impairment of health is not caused by accident but by exposure to conditions incidental to and arising out or in the course of the claimant's employment with the Hoopa Valley Tribe.

H. **"Claimant"** for the purposes of this ordinance shall mean any person who is employed by the Hoopa Valley Tribe, except for independent contractors, who suffers an injury either specific or cumulative, arising from that employment or occurring in the course of that employment.

I. **"Environmental Tobacco"** shall mean the by-products of the ingestion of any tobacco product that is exhaled, ejected, or transmitted through the medium of ambient air or which is brought into physical contact by any means.

J. **"Written Decision"** shall mean the following:

1. That any finding, decision, award, arbitration result, response to Petition, or response to Appeal shall be reduced to written form by the Arbitrator / Referee, Judge of the Hoopa Valley Tribal Court, or any persons appointed by such Judge or Tribal Court for the purposes of hearing adjudicating, litigating or deciding any issue before the Hoopa Valley Tribal Court or its appointed Arbitrators; or

2. The finding(s) and decision(s) of the Third Party Administrator to accept in full or in part or deny in full or in part any claim submitted by a claimant regarding a work injury.

"Days" shall mean calendar days unless otherwise expressly provided.

§ 4 POLICY

It is the policy of the Hoopa Valley Tribal Council:

A. To self-fund the Tribe's Workers' Compensation liabilities and to administer the program in accordance with accepted Tribal law, unless amended by Tribal resolution.

B. To provide Employees with Workers' Compensation benefits to which they are entitled under Tribal resolution and Tribal Risk Management procedures, regulations and schedule of benefits, said benefits being defined as follows:

1. Medical Costs Covered. Usual and customary medical costs will be approved by Tribal Risk Management.

2. Medical Service Providers. Medical Services and providers will be approved by Tribal Risk Management.

3. Universal Benefits. All Employees will be entitled to the same benefits under the same rules.

4. Claim Filing Period. All Employees are required to file claims in accordance with this section.

a. Claims for injury shall be filed with the Hoopa Valley Tribe's Insurance Department within ninety (90) days of the injury.

b. Claims for occupational disease shall be made within one year from the date of injury. The date of injury is that date the claimant knew or reasonably should have known of the occupational nature of the disease.

c. Any claim not filed within the applicable period outlined in section four (4) shall not be covered.

§ 5 DISPUTED CLAIMS ADJUDICATION

A. The Tribe's Third Party Administrator shall receive all claims and make a written decision on all claims. Written notice of the determination of the Third Party Administrator shall be forwarded to the claimant and the Hoopa Valley Tribe within 90 calendar days of the date the claim was filed.

1. The written decision shall be delivered via U.S. Mail to the last known address of the Claimant and the Hoopa Valley Tribe's Insurance Department and shall contain a proof of service reflecting the date the written decision was mailed to the claimant and the Hoopa Valley Tribe's Insurance Department.

B. REQUEST FOR HEARING

1. Jurisdiction

The Hoopa Valley Tribal Court shall have exclusive jurisdiction of all claims for workers' compensation benefits filed by Employees of a tribal entity.

2. Initiation of Claim

A party may initiate a claim with the Hoopa Valley Tribal Court by the filing of any of the following:

- A. Application For Adjudication;
- B. Lien;
- C. Stipulation with Request For Award; or
- D. Compromise and Release.

3. Form Initiating Claims

There shall be only forms approved by the Hoopa Valley Tribe and / or the Third Party Administrator.

4. All requests for hearing shall be made within thirty (30) days of the date of service of the written notice of the determination of the Third Party Administrator described in section 5(A), above.

5. Any and all requests for hearing due to a disputed claims adjudication by the Third Party Administrator shall be made in writing in conformance with the rules of the Hoopa Valley Tribal Court.

6. All requests for hearing must be served upon all named parties within 30 days of filing the request for hearing with the Hoopa Valley Tribal Court.

7. Proof of service of the request for hearing shall be filed with the Hoopa Valley Tribal Court within five (5) calendar days of actual service upon all interested parties.

The status conference at the Hoopa Valley Tribal Court shall commence no sooner than 30 days and no later than 90 days after return of the proof of service of the request for hearing.

The Hoopa Valley Tribal Court is hereby authorized to send all disputed workers' compensation matters to arbitration before an experienced workers' compensation practitioner.

10. The Arbitrator as appointed by the Chief Judge of the Hoopa Valley Tribal Court shall set the matter for hearing no sooner than 30 days and no later than 120 days of the Arbitrator's appointment by order of the Hoopa Valley Tribal Court.

11. These time periods may be adjusted upon the mutual written agreement of all interested parties and order of the Hoopa Valley Tribal Court.

C. STATUS CONFERENCE

1. The Hoopa Valley Tribal Court shall hold a status conference no sooner than 30 days and no later than 90 days after return of the proof of service of the request for hearing.

2. The Arbitrator shall set a date for any hearing(s) to be conducted by the Arbitrator in accordance with this Ordinance.

D. SELECTION OF ARBITRATOR

1. The Hoopa Valley Tribal Court shall maintain a list of at least seven (7) potential Arbitrators that are admitted to practice law in the State of California and / or the Hoopa Valley Tribal Court Bar and who practice in the area of workers' compensation law.

2. Upon the Hoopa Valley Tribal Court's setting of a final completion date for arbitration, the Court shall send a list of seven potential Arbitrators to the parties for their review. Upon receipt of the list of potential Arbitrators, the parties shall each be entitled to strike three names from the list. Each party shall inform the Court of the names stricken within ten (10) calendar days of the date of service of the initial list of potential Arbitrators. The Court shall then select the Arbitrator from the list of remaining eligible Arbitrators.

3. The parties may not disqualify or recuse the Arbitrator selected by the Hoopa Valley Tribal Court except as described in subsection D(2), above.

E. BURDEN OF PROOF

1. The Employee shall have the initial burden of proof by a preponderance of the evidence.

2. The burden of proof shall rest upon the Employee, or Employee's dependents in cases of death, to prove:

- a. that the injury complained of was a result of an accident or occupational disease;
- b. that the injury arose out of claimant's employment with the Hoopa Valley Tribe;
- c. that the injury arose while in the course of claimant's employment; and
- d. the nature and extent of disability.

F. WITNESSES

- 1. All parties shall file and serve a witness list showing the names and addresses of all witnesses each party intends to call in the matter 10 days prior to the initial scheduled date for arbitration.
- 2. Written statements of witnesses shall be admitted into evidence only when a witness cannot appear in person and only when all parties so stipulate.
- 3. The Hoopa Valley Tribal Court may issue subpoenas to compel a witness' attendance at a hearing consistent with the Hoopa Valley Tribal Code.

G. DOCUMENTS

All parties shall prepare a joint exhibit list of relevant documents each party wishes to introduce at the time of hearing in this matter and file same 10 days prior to the initial scheduled date for arbitration.

H. MOTIONS

All procedural motions shall be filed in the Hoopa Valley Tribal Court, served upon all parties and the Arbitrator and heard by the Arbitrator no later than 10 days prior to the initial scheduled date for hearing by the Arbitrator.

I. CONTINUANCES

All requests for continuance shall be filed in the Hoopa Valley Tribal Court, served upon all parties and the Arbitrator and heard by the Arbitrator no later than 10 days prior to the initial scheduled date for hearing by the Arbitrator.

J. ARBITRATOR

- 1. An attorney admitted to practice in the State of California and / or the Hoopa Valley Tribal Court Bar and experienced in Workers' Compensation

practice shall serve as the Arbitrator and shall control the proceedings. The Arbitrator shall take whatever action necessary to ensure an equitable, orderly and expeditious hearing. Parties shall abide by the Arbitrator's rulings.

2. The Arbitrator shall have the authority to:

- a. Administer oaths or affirmations;
- b. Regulate the course of the hearing;
- c. Rule on offers of proof and the admissibility of documents;
- d. Limit the number of witnesses when testimony would be unduly repetitious;
- e. Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.

3. The Arbitrator shall be paid at an hourly rate of \$125 for research, drafting and bench time. The Arbitrator shall be paid at an hourly rate of \$50 per hour for travel time to and from Hoopa, California. All expenses related to the Arbitrator's services shall be covered by the Arbitrator.

K. PARTIES AND REPRESENTATIVES

1. All parties are entitled to be present for the entire hearing.

2. Any party may be represented by an attorney, a spokesperson admitted to practice before the Hoopa Valley Tribal Court or may represent themselves, in propria persona.

L. REPORTING

1. All hearings shall be reported by a licensed stenographic reporter, i.e., Certified Shorthand Reporter.

2. Payment for the Certified Shorthand Reporter shall be borne by the Hoopa Valley Tribe. However, any party requesting a transcript of the proceedings shall pay for the requested transcript(s).

3. The Hoopa Valley Tribe shall be responsible for retaining the Certified Shorthand Reporter to provide services at the time of the hearing.

M. EVIDENCE

1. The Hoopa Valley Tribal Rules of Evidence as established in Title 2 of the

Hoopa Valley Tribal Code shall apply in workers' compensation proceedings. Should a question be left unanswered by said Rules, the Federal Rules of Evidence shall be used as a guideline in workers' compensation proceedings.

N. AUDIENCE

1. All hearings involving workers' compensation disputes shall be held in executive session.

O. ORDER OF PROOF

1. The Employee has the burden of proof and shall present its case first.

2. Opening Statements. Parties shall be afforded the opportunity to present opening statements to explain what they intend to prove during the hearing. The Employer may make their opening statement either immediately after the other party's opening statement or immediately before their own presentation of evidence.

3. Presentation of Evidence. Parties may present evidence through the introduction of documents and the testimony of witnesses. Both parties may examine their own witnesses and cross-examine the witnesses of the other parties. The Arbitrator may examine witnesses at any point in their testimony.

4. Closing statements. Parties shall be afforded the opportunity to present closing statements to explain how the evidence supports what they intended to prove.

P. DECISION

1. The Arbitrator's decision shall be in writing and served upon the parties no later than 30 calendar days after the close of the hearing.

2. The written decision shall include:

- a. The procedural and substantive issues presented;
- b. Findings of fact and the basis for same;
- c. Conclusions of law and the basis for same; and
- d. The order.

3. The Arbitrator's decision shall be binding, however, such decision is subject to judicial review in the Hoopa Valley Tribal Court and the Hoopa Valley Tribal Court of Appeals.

Q. APPELLATE REVIEW

1. Any party to the underlying action may appeal the Arbitrator's decision to the Hoopa Valley Tribal Court.
2. Any appeal of the Arbitrator's decision shall be filed in writing with the Clerk of the Hoopa Valley Tribal Court no later than 30 calendar days from the date of service of the decision of the Arbitrator.
3. The fee for filing a notice of appeal in the Hoopa Valley Tribal Court shall be equal to the fee to appeal a decision of the Tribal Employment Rights Commission. The fee for filing an appeal in the Hoopa Valley Tribal Court of Appeal shall be consistent with the Hoopa Valley Tribal Code.
4. All appellate proceedings in the Hoopa Valley Tribal Court shall be governed by the rules and procedures regarding appeals provided in the Hoopa Valley Tribal Code and Rules of Court.
5. The Hoopa Valley Tribal Court shall utilize a substantial evidence standard in appellate review of the factual determinations by the Arbitrator and a de novo standard in appellate review of legal determinations by the Arbitrator.
6. The Hoopa Valley Tribal Court shall set a briefing schedule, receive and review briefs, and conduct oral argument, if necessary, within 90 days of the filing of the Notice of Appeal.
 - a. Appellant shall file an opening brief within the time period set by the Hoopa Valley Tribal Court;
 - b. Respondent shall file a responsive brief within the time period set by the Hoopa Valley Tribal Court;
 - c. No reply to the Respondent's responsive brief shall be accepted.
7. Any party to the underlying action may appeal the Hoopa Valley Tribal Court's decision to the Hoopa Valley Tribal Court of Appeals consistent with the Hoopa Valley Tribal Code and after paying any applicable filing fees.
8. Any appeal of the Hoopa Valley Tribal Court's decision shall be filed in writing with the Clerk of the Hoopa Valley Tribal Court no later than 30 calendar days from the date of service of the decision of the Hoopa Valley Tribal Court. The Clerk of the Hoopa Valley Tribal Court shall immediately forward the Notice of Appeal to the Hoopa Valley Tribal Court of Appeals for further action.
9. The Hoopa Valley Tribal Court of Appeal shall set a briefing schedule, receive and review briefs, and conduct oral argument, if necessary, within 90 days of the filing of the Notice of Appeal.

- a. Appellant shall file an opening brief within the time period set by the Hoopa Valley Tribal Court of Appeal;
- b. Respondent shall file a responsive brief within the time period set by the Hoopa Valley Tribal Court of Appeal;
- c. No reply to the Respondent's responsive brief shall be accepted.

R. LAW TO APPLY

The Hoopa Valley Tribal Court and Hoopa Valley Tribal Court of Appeal shall follow the Hoopa Valley Tribal Code to determine which law to apply. California case law shall not be followed, but may be used for guidance. Any use of California statutory law for guidance shall be liberally construed in favor of the Employer.

S. NOTICE TO STATE

Any applicant that received disability benefits from the State of California shall immediately notify the State of California of the institution of an action seeking additional benefits in the Hoopa Valley Tribal Court.

T. APPROVAL OF SETTLEMENT

1. Any settlement of an action instituted in the Hoopa Valley Tribal Court shall be approved in writing by a Judge of the Hoopa Valley Tribal Court.
2. Settlement of Claims

The Hoopa Valley Tribal Court shall have exclusive jurisdiction to approve settlements reached between the parties and submitted to the Hoopa Valley Tribal Court in the form of Stipulations for Award or Compromise and Release.

U. EFFECT OF FILING AN ACTION

1. During the pendency of the action, Claimant shall continue to receive all benefits approved by the Third Party Administrator in its original written decision, but shall not receive any new benefits claimed before the Hoopa Valley Tribal Court.
2. Payments made to claimant during the pendency of the action shall not be recouped or recovered by the Third Party Administrator or the Hoopa Valley Tribe, except in cases of fraud.

V. ATTORNEY'S FEES

1. No award of attorney's fees shall be made to either the claimant or the Hoopa Valley Tribe due to success in a proceeding before the Hoopa Valley Tribal Court or the Hoopa Valley Tribal Court of Appeals.

2. Each party is responsible for their respective attorneys' fees including, but not limited to, representation at depositions.

W. CONTINGENCY FEE LIMIT

A claimant may be represented by any spokesperson or attorney admitted to practice before the Hoopa Valley Tribal Bar. The fees paid to a spokesperson or attorney shall be limited to twenty five percent (25%) of the permanent disability stipulated to or awarded. However, nothing herein shall prohibit payment of an hourly fee to an attorney or spokesperson on a services provided basis.

X. SUBROGATION

The claim of an Employee for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the Employer. Any Employer who pays, or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation may likewise make a claim or bring an action against the third person.

If either the Employee or the Employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If either the Employer or Employee brings the action, the other may, at anytime before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

If the action is prosecuted by the Employer alone, evidence of any amount which the Employer has paid or become obligated to pay by reason of the injury or death of the Employee is admissible, and such expenditures or liability shall be considered as proximately resulting from such injury or death in addition to any other items of damage proximately resulting therefrom.

If the Employee joins in or prosecutes such action, either the evidence of the amount of disability indemnity or death benefit paid or to be paid by the Employer or the evidence of loss of earning capacity by the Employee shall be admissible, but not both. Proof of all other items of damage to either the Employer or Employee proximately resulting from such injury or death is admissible and is part of the damages.

In the event of suit against such third party:

If the action is prosecuted by the Employer alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employer's attorney in effecting recovery both for the benefit of the Employer and the Employee. After the payment of such expenses and attorney's fees, the court shall apply out of the amount of such judgment an amount sufficient to reimburse the Employer for the amount of his expenditure for compensation together with any amounts to which he may be entitled as special damages and shall order any excess paid to the injured Employee or other person entitled thereto.

If the action is prosecuted by the Employee alone, the court shall first order paid from any judgment for damages recovered the reasonable litigation expenses incurred in preparation and prosecution of such action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the Employee's attorney in effecting recovery both for the benefit of the Employee and the Employer. After the payment of such expenses and attorney's fee the court shall, on application of the Employer, allow as a first lien against the amount of such judgment for damages, the amount of the Employer's expenditure for compensation together with any amounts to which he may be entitled as special damages.

If the action is prosecuted both by the Employee and the Employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, the court shall first order paid from any judgment for damages recovered, the reasonable litigation expenses incurred in preparation and prosecution of such action or actions, together with reasonable attorneys' fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of such expenses and attorneys' fees the court shall apply out of the amount of such judgment for damages an amount sufficient to reimburse the Employer for the amount of his expenditures for compensation together with any other amounts to which he may be entitled as special damages.

The amount of reasonable litigation expenses and the amount of attorneys' fees under subdivisions (a), (b), and (c) of this section shall be fixed by the court. Where separate attorneys represent the Employer and Employee they may propose to the court, for its consideration and determination, the amount and division of such expenses and fees.

The court shall, upon further application at any time before the judgment is satisfied, allow as a further lien the amount of any expenditures of the

Employer for compensation subsequent to the original order.

After payment of litigation expenses and attorneys' fees fixed by the court pursuant to this Section and payment of the Employer's lien, the Employer shall be relieved from the obligation to pay further compensation to or on behalf of the Employee under this division up to the entire amount of the balance of the judgment, if satisfied, without any deduction. No satisfaction of such judgment in whole or in part, shall be valid without giving the Employer notice and a reasonable opportunity to perfect and satisfy his lien.

The Arbitrator is empowered to and shall allow, as a credit to the Employer to be applied against his liability for compensation, such amount of any recovery by the Employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees, pursuant to the provisions of this Ordinance, or has not been applied to reimburse the Employer.

Any Employer entitled to and who has been allowed and has perfected a lien upon the judgment or award in favor of an Employee against any third party for damages occasioned to the same Employer by payment of compensation, expenses of medical treatment, and any other charges under this act, may enforce payment of the lien against the third party, or, in case the damages recovered by the Employee have been paid to the Employee, against the Employee to the extent of the lien, in the manner provided for enforcement of money judgments generally.

If an action as provided in this chapter prosecuted by the Employee, the Employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the Employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in absence of a written agreement so to do executed prior to the injury.

Any judgment or settlement of an action as provided for in this Ordinance is, upon notice to the court, subject to the same lien claims of the Employment Development Department and shall be allowed by the court as it determines necessary to avoid a duplication of payment as compensation to the Employee for lost earnings.

Y. THIRD PARTY CREDIT / COLLATERAL SOURCE DEDUCTION

The Arbitrator shall off-set any monies received by the Employee during the relevant period, from other employment, unemployment compensation, disability benefits, welfare or otherwise, including any monies received as described in Section 5(X) of this Ordinance, as a credit to the Employer to be applied against his liability for compensation.

Z. INDEPENDENT MEDICAL EXAMINATION

Whenever the right to compensation under this division exists in favor of an Employee, he shall, upon the written request of his Employer, submit at reasonable intervals to examination by a practicing physician, provided and paid for by the Employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the Arbitrator.

The request or order for the medical examination shall fix a time and place therefor, due consideration being given to the convenience of the Employee and his physical condition and ability to attend at the time and place fixed.

The Employee may employ at his own expense a physician, to be present at any examination required by his Employer.

So long as the Employee, after written request of the Employer, fails or refuses to submit to such examination or in anyway obstructs it, his right to begin or maintain any proceeding for the collection of compensation shall be suspended.

If the Employee fails or refuses to submit to examination after direction by the Arbitrator, or in anyway obstructs the examination, his right to the disability payments that accrue during the period of such failure, refusal or obstruction, shall be barred.

Any physician who makes or is present at any such examination may be required to report or testify as to the results thereof.

Any party who subpoenas medical records in any proceeding under this division shall concurrent with service of the subpoena upon the person who has possession of the medical records, send a copy of the subpoena to all parties of record in the proceeding.

No compensation is payable in case of the death or disability of an Employee when his death is caused, or when and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, if the risk of the treatment is, in the opinion of the Arbitrator, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

§ 6 ACTS OUTSIDE COURSE OR SCOPE OF EMPLOYMENT

A. Employees determined to be acting outside of the course or scope of their employment shall be afforded no coverage under the Hoopa Valley Tribe's Workers' Compensation plan.

B. An accident occurring to an Employee while on the way to or from work is not

within the due course or scope of employment unless such travel is in direct connection with the Employee's work.

C. Liability for compensation shall not exist against the Hoopa Valley Tribe for any injury sustained by an Employee if the injury is caused by any of the following:

1. Where the injury is caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured Employee;
2. Where the injury is self-inflicted;
3. Where the Employee has willfully and deliberately caused his or her own death;
4. Where the injury arises out of an altercation in which the injured Employee is the initial physical aggressor;
5. Where the injury is caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of section 17 of the California Penal Code, by the injured Employee and the Employee is found to have committed such act by a preponderance of the evidence; or
6. Where the injury arises out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the Employee's work related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

§ 7 REFUSAL OF EMPLOYEE TO SUBMIT TO TREATMENT

No compensation shall be payable for the death or disability of an Employee if the Employee's death is caused by, or insofar as the Employee's disability may be aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable medical aid, advice or surgical treatment.

§ 8 INCOME BENEFITS FOR TEMPORARY OR NO INCREASED COMPENSATION TOTAL DISABILITY

A. Temporary Disability

1. If the injury causes temporary partial or temporary total disability, the disability payment is two-thirds (2/3) of the average weekly earnings. No payment is due during the first three days after the Employee leaves work as a result of the injury.
2. Average weekly wage will be determined in accordance with California Labor Code section 4453 in effect as of January 1, 1997, and as thereafter

amended.

3. Such payments will be reduced by the sum of unemployment compensation benefits and extended duration benefits received by the Employee during the period of such disability. The injured Employee shall report any pensions, disability payments or earnings to the Third Party Administrator within ten (10) days of receipt of such funds.

B. Permanent Disability

1. In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured worker, and the Employee's age at the time of the injury, and consideration being given to the diminished ability of the Employee to compete in an open labor market.

2. The schedule of the administrative director of the California Department of Workers' Compensation may be used as guidance in determining the percentages of permanent disability, but is not prima facie evidence of a percentage of disability.

3. Average weekly wage will be determined in accordance with California Labor Code section 4453 in effect on January 1, 1997, and as thereafter amended. Computation of permanent disability will be in accordance with California Labor Code section 4658 in effect on January 1, 1997, and as thereafter amended.

C. Permanent Total Disability

1. Permanent total disability is a disability that precludes the injured Employee from any and all gainful employment. There shall not be any presumptions of permanent total disability.

2. Compensation shall be paid at the appropriate weekly rate for temporary disability subject benefits.

D. No compensation in this section shall be payable subsequent to the death of the injured Employee.

§ 9 FATALITY INCOME BENEFITS

A. When an injury causes death within five years from the date of the injury, the Employer will be liable for compensation to the dependents of the injured Employee as provided for in this section. The dependent must be a spouse or a minor child, totally or partially dependent upon the injured worker, at the time of the injury and at the time of death in order to qualify for benefits.

B. The death benefit will be four times the annual earnings from the Hoopa Valley Tribal Council, not to exceed the following maximums:

1. Spouse plus minor child or children: \$115,000.00;
2. Spouse only: \$95,000.00;
3. Minor Child or Children Only: \$95,000.00; or
4. Additional Maximum Burial Allowance: \$5,000.00.

C. The death benefit will be paid at a weekly rate of two-thirds of the average weekly salary of the deceased Employee while employed by the Hoopa Valley, subject to a maximum compensation rate \$406.00 and a minimum rate of \$224.00.

D. The weekly compensation will be divided between the qualifying dependents in proportion to the percentage of support each received from the deceased Employee. It will be presumed that each qualifying dependent received equal support from the deceased Employee.

§ 10 ENVIRONMENTAL TOBACCO

Coverage shall be denied and benefits shall not be paid to any claimant claiming injury or disease due to environmental tobacco.

§ 11 STRESS CLAIMS

Coverage shall be denied and benefits shall not be paid to any claimant claiming injury or disease due to stress related work injuries.

§ 12 CHIROPRACTIC TREATMENT

Coverage shall be denied and benefits shall not be paid to any claimant who seeks treatment from a Chiropractor for any work related injury, except upon the written referral of a Medical Doctor (MD) licensed by the Board of Medical Quality Assurance of California. Medical expenses incurred by claimant for treatment by a Chiropractor will not be covered unless prior written referral is made by a Medical Doctor licensed by the Board of Medical Quality Assurance of California.

§ 13 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended in accordance with the Legislative Procedures Act of the Hoopa Valley Tribe.

§ 14 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 15 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Hoopa Valley Tribe from unconsented suit in Tribal, Federal or State court.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) members were present, constituting a quorum, at a special meeting thereof; duly and specially called, noticed, convened and held this 20th day of July, 2000; and that this Ordinance was adopted by a vote of (6) for, none (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

Dated this 20th day of July, 2000

DUANE J. SHERMAN, SR., CHAIRMAN
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council